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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186986
Party	Defendant SHAUN ROBERTS ALLEN
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Date	02/20/2009
Attachments	ANSWER SILVER FERN.pdf ( 3 pages )(62495 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LOEST & McNAMEE, INC.,

Plaintiff/Opposer,

v.

SHAUN ROBERTS ALLEN,

Defendant/Applicant.

In the matter of Serial No. 77247611

For the mark SILVER FERN

Published on February 7, 2006

Opposition No. 91186986

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**ANSWER**

Defendant Shaun Roberts Allen ("Allen" or "Applicant"), by and through his undersigned attorneys hereby answers Plaintiff Loest & McNamee's ("Loest" or "Opposer") Notice of Opposition, and states as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 of the Notice of Opposition, and accordingly, denies the allegations.

2. Applicant admits the allegations in paragraph 2 of the Notice of Opposition.

3. Applicant denies all of the allegations in paragraph 3 of the Notice of Opposition.

4. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 4 of the Notice of Opposition, and accordingly, denies the allegations.

5. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 5 of the Notice of Opposition, and accordingly, denies the allegations.

6. Applicant denies all of the allegations in paragraph 6 of the Notice of Opposition.

7. Applicant admits that its mark is intended for use on wine. Applicant is without sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 7 of the Notice of Opposition and, accordingly, denies the allegations.

8. Applicant admits that registration of the applied-for mark would give Applicant prima facie evidence of the validity and ownership of the applied-for mark and of Applicant's exclusive right to use the applied-for mark. Applicant denies all other allegations contained in paragraph 8 of the Notice of Opposition.

### **Affirmative Defenses**

#### **First Affirmative Defense**

9. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded mark of Opposer are not confusingly similar.

#### **Second Affirmative Defense**

10. Opposer's pleaded mark is not distinctive or famous and, accordingly, Applicant's mark cannot dilute the distinctive quality of Opposer's mark.

#### **Third Affirmative Defense**

11. Opposer is barred by the doctrines of waiver, acquiescence and estoppel.

### **Counterclaim For Cancellation**

12. Applicant hereby counterclaims for cancellation of Opposer's Registration No. 2906981. For purposes of this counterclaim only, Applicant assumes ownership of Registration No. 2906981 by Opposer.

13. The grounds for cancellation are as follows:

14. Opposer has abandoned the use of its pleaded mark. On information and belief, Opposer has failed to use the its pleaded mark in commerce in connection with the sale of wine

for a period in excess of three (3) years and Opposer does not intend to resume use of the pleaded mark in connection with such goods.

15. For the foregoing reasons, Applicant requests that Opposer's U.S. Registration No. 2906981 be cancelled.

WHEREFORE, having answered the Notice of Opposition, Allen prays that the opposition be dismissed, that its application register and for such other and further relief as the Board may deem just and proper.

Respectfully submitted,

/s/

February 20, 2009

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on opposing counsel by United States mail, first class, postage prepaid, this 20<sup>th</sup> day of February, 2009, to:

Paulette R. Carey  
Buchanan Law Firm, LLP  
510 Thornall Street, Suite 200  
Edison, NJ 08337

/s/

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James B. Astrachan